IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WA.No. 1507 of 2007

AGAINST THE JUDGEMENT IN WPC.34019/2006 Dated 11/04/2007

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APPELLANT/ PETITIONER:

TONY ANTO P. S/O. P.J.ANTONY,
PALLIKUNNATHU HOUSE, KURUMBILAVU DESOM,
THRISSUR DISTRICT.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENT/ RESPONDENT:

THE GREATER COCHIN DEVELOPMENT AUTHORITY
KADAVANTHRA, COCHIN-20, REP. BY ITS SECRETARY.

BY SR. ADVOCATE SHRI K.P. DANDAPANI.
ADV. SRI.MILLU DANDAPANI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1507 OF 2007

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Dated this the 28th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal is directed against the judgment delivered by the learned single Judge in W.P.(C) No. 34019 of 2006 dated 11th April 2007. By the impugned judgment, the learned single Judge has rejected the Writ Petition. The learned single Judge has further directed the respondent -Greater Cochin Development Authority to refund the amount deposited by the petitioner/appellant with interest at the rate of 6% from the date of collection till the date of payment after deducting proportionate rent for the period of use of shop room.

2. In the Writ Petition filed, the petitioner/appellant had called in question the proceedings initiated by the respondent as per Exts. P2 to P4 in respect of shop room No.D.2105 of Jawaharlal Nehru International Stadium, Kaloor and had prayed for a direction to quash the aforesaid proceedings. The petitioner/appellant had also sought for a direction to declare that the respondent has no manner of right to auction the shop room No. D.2105 as long as the registered lease deed No.1203/2006 of SRO, Ernakulam in favour of the petitioner is in force.

3. The learned single Judge, as we have already noticed, without taking note of the reliefs sought for by the petitioner, has thought it fit to reject the Writ Petition on yet another ground. Aggrieved by the orders so passed by the learned single Judge, the petitioner is before us in this appeal.

4. Learned counsel appearing for the petitioner/appellant would submit that the respondent-Greater Cochin Development Authority had executed a lease agreement in his favour after allotting shop room No. D.2105 of Jawaharlal Nehru International Stadium, Kaloor. To support that assertion, the learned counsel for the appellant takes us through Ext.P5 (a true copy of the registered lease agreement dated 16.02.2006, executed between the petitioner and the respondent) produced along with the reply affidavit filed in the Writ Petition, by the petitioner/appellant. and submits that the respondent, without cancelling the said lease agreement, could not have issued a public auction notification to allot the aforesaid shop in favour of yet another person.

5. Execution of the lease agreement is not in doubt. Learned senior counsel Shri K.P. Dandapani, appearing for the appellant, on instruction, would submit that the said lease agreement has been executed by the respondent in favour of the petitioner. If that is so, the respondent,

without cancelling the aforesaid lease agreement, in accordance with law, could not have notified the aforesaid shop for allotment, by issuing public notification.

6. In view of the above, in our opinion, the learned single Judge was fully unjustified in rejecting the Writ Petition filed by the petitioner/appellant and in issuing other directions.

7. In view of the above, the petitioner/ appellant succeeds in this Writ Appeal. Therefore, the following:

O R D E R

i) Writ Appeal is allowed.

ii) The orders passed by the learned single Judge in W.P.(C) No.34019 of 2006 dated 11th April 2007, is set aside.

iii) The notification impugned in the Petition in so far as auctioning of the appellant's shop for allotment by public auction is quashed.

iv) Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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